

**NORTH CAROLINA ALCOHOLIC BEVERAGE CONTROL  
COMMISSION MINUTES  
SEPTEMBER 11, 2007**

The following narrative and summary highlights action taken by the North Carolina Alcoholic Beverage Control Commission at its regular meeting on September 11, 2007, beginning at 10:30 a.m. The meeting was recorded and the disk is on file at the ABC Commission in the Legal Division.

**ROLL CALL**

Chairman Douglas A. Fox and Commissioner John Lyon were present at the meeting. Commissioner Mike Joyner was not present.

**MINUTES OF AUGUST 14, 2007 MEETING**

Chairman Fox made a motion to waive the reading of the minutes from the August 14, 2007, meeting into the record. Seconded by Commissioner Lyon. So Ordered. Chairman Fox made a motion to approve the minutes from the August 14, 2007, meeting. Seconded by Commissioner Lyon. So Ordered.

**EXECUTIVE ORDER REGARDING CONFLICTS OF INTEREST**

As required by Executive Order One, Chairman Fox asked Commissioner Lyon if there were any conflicts of interest or any conditions or facts that might create the appearance of a conflict of interest with respect to any matters on the Agenda. Commissioner Lyon recused himself from hearing case #88A ó Circle K Store 5102, hearing case #88B ó Circle K Store 5102, hearing case #89A ó Circle K Store 5102, hearing case #89B ó Circle K Store 5102, hearing case #90A ó Circle K Store 5102 and hearing case #90B ó Circle K Store 5102. The Circle K Store 5102 hearing cases will be continued to the October 16, 2007, Commission meeting. Chairman Fox stated that he had no conflicts.

**I. HEARING CASES - 96**

Chief Counsel Fred A. Gregory stated that there were no contested cases.

Mr. Osama Bader, owner of First Offense case #4, Jolly Rogers, was present to speak on behalf of the business. Mr. Bader stated that an underage sale violation occurred and this was the business's first violation. Mr. Bader had taken a class and asked the Commission to reduce the penalty.

Chairman Fox stated to Mr. Bader that the violation occurred less than four weeks after opening of the business.

Chairman Fox made a motion to reduce the penalty to \$700.00 with the stipulation that all employees attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Hamir Alseigi, representative of First Offense case #36, Save Mart, was present to speak on behalf of the business. Mr. Alseigi stated that he told the employee to ask for identification but the employee sold to an underage person.

Chairman Fox made a motion to reduce the penalty to \$800.00 with the stipulation that all employees attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Ms. Kelly Oyama, owner of hearing case #47, Wine Up, was present to speak on behalf of the business. Ms. Oyama asked the Commission to consider lowering the fine. The violation was their first offense and she had been licensed in the State of North Carolina as a permittee since 1994 with no violations. Ms. Oyama stated she did take the ALE class, had made changes in the way the business was operated and now someone is solely responsible for checking I.D.s and they are not checked at the bar.

The business is a small wine bar and private club. Ms. Oyama stated she was busy with some young people and carding them. The underage person was standing there waiting and she shouldn't have served him.

Chairman Fox made a motion to reduce the penalty to \$700.00 with the stipulation that all employees attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Jerry Stainback, attorney for hearing case #91, Four Corners, was present to speak on behalf of his client, Mr. Samuel Nega. Mr. Stainback stated on February 24, 2007, a young man came into the store and presented to an employee a driver's license and the employee allowed the young man to purchase a malt beverage. The employee was charged with the underage sale and told the ALE Agent she indicated that she had miscalculated the age. Mr. Stainback said that Four Corners had never been involved in this type of offense in the past and the employee immediately advised Mr. Nega what had happened. Mr. Stainback stated he thought that a miscalculation is a situation which deserves some consideration by the Commission.

Chairman Fox asked if the employee was still employed by Four Corners. Mr. Stainback said she was. Chairman Fox stated that the underage person was 17 years old.

Chairman Fox made a motion to reduce the penalty to \$500.00 with the stipulation that all employees attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Moe McKnight, attorney for hearing case #17, Lowes Foods 185, was present to speak on behalf of the business. Mr. McKnight stated that the store in Garner was visited by ALE Agents to conduct an underage campaign and the cashier checked the I.D. but did not key the date of birth into the register system and proceeded with the transaction. Mr. McKnight stated that the cashiers go through computer base training regarding the sale of restricted items and the registers alert the cashiers anytime an age restricted item goes through the scanner and prompts the cashier to key in the date of birth. Every store has a driver's license guide book to help identify counterfeit driver licenses and every six months every cashier in the company signs an acknowledgement form describing the laws and procedures that they are required to follow in regarding age restricted items.

Mr. McKnight asked the Commission for some relief on this penalty.

Commissioner Lyon asked Mr. McKnight how easy was it to complete an underage sale. Mr. McKnight stated it was in the discretion of the cashier. Commissioner Lyon asked if the cashier entered a date of birth which makes the patron 21 years old. Mr. McKnight stated that the cashier can enter a false date and override the system.

Chairman Fox stated the underage sale was made to a 17 year old.

Chairman Fox made a motion to reduce the penalty to \$1,800.00 and they were welcome to attend the RASP class if they desire to do so. Seconded by Commissioner Lyon. So Ordered.

Ms. Mary Susan Young, owner of hearing case #46, Cody's Pub, was present to speak on behalf of the business. Ms. Young asked the Commission for mercy and she said she could not afford to lose her permits. Chairman Fox stated she would not lose her permit upon payment of \$500.00. The Chairman stated she could pay the fine and have no suspension. Ms. Young replied thank you and the penalty remained the same as it was on the Offer In Compromise.

Mr. Bobby Rusher, owner of hearing case #33, Rushco Food Store 5, was present to speak on behalf of the business. Mr. Rusher stated he was at the Commission meeting to ask for a reduction in the penalty. Mr. Rusher stated the employee carded the underage buyer but miscalculated the birth date and sold. Mr. Rusher stated they go through a thorough training process with their cashiers and the cashiers sign a policy and procedure form acknowledging the ABC rules and regulations.

Chairman Fox asked Mr. Rusher how many stores they have. Mr. Rusher replied fifteen stores in different counties and five or six stores in Rowan County. Mr. Rusher stated eight to nine employees are at this location.

Chairman Fox made a motion to reduce the penalty to \$1,500.00 with the stipulation that all employees in this store attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. Melvin Barnett, owner of hearing case #18, Hankø Sports Room, was present to speak on behalf of the business because of drug violations by an employee. Mr. Barnett stated this place is a bar with the same clientele. Mr. Barnett stated this was a decision an employee made and not him and he had no idea about the charges until November and the first charges were in August, 2006.

Chairman Fox made a motion to reduce the penalty to \$2,250.00 with the stipulation that the owner and bartender attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Mr. David Farman, owner of Cantina Mexicana, an add-on, was present to speak on behalf of the business. Mr. Farman stated that the patron had purchased a beer before 2:00 a.m. and the patron finished his beer but the bottle was sitting out when the officer came in between 2:30 ó 2:40 a.m.

Chairman Fox asked Mr. Farman how long had he been in business. Mr. Farman stated 2003 and he had no previous violations.

Chairman Fox made a motion to reduce the penalty to \$250.00 with the stipulation that all employees attend a RASP class within 45 days. Seconded by Commissioner Lyon. So Ordered.

Ms. Charlotte Thaxton, owner and manager of Wake Cross Roads Express, was present to speak on behalf of the business. This was First Offense case #2 on the August agenda. Ms. Thaxton stated the convenience store was opened about three years ago and employees are taught to check identifications. Ms. Thaxton stated that one night the employee was not paying attention and did not check the I.D. of the patron. Ms. Thaxton stated that since this incident, the employee checks the driverø license and the date can be punched into the register.

Ms. Thaxton stated she came to try to have the penalty reduced. Chairman Fox stated he wished she had come last month. Chairman Fox stated her case was set for July and then continued to August. Chairman Fox stated the order had already been entered and the penalty would not be reduced. Chairman Fox stated he didnø see anything that could be done.

Mr. Moe McKnight, attorney for First offense case #10, Lowes Foods 177, was present to speak on behalf of the business. Mr. McKnight stated that the case occurred in April in Boone. Mr. McKnight stated that the cashier did look at the I.D. and did override the system. Mr. McKnight stated he would like the employees at that store to attend the training as on the previous store and asked for relief on this first offense.

Chairman Fox asked how many employees at the store. Mr. McKnight stated about 100 cashiers.

Chairman Fox made a motion to reduce the penalty to \$600.00 and offered employees an opportunity to attend a RASP class. Seconded by Commissioner Lyon. So Ordered.

Chairman Fox made a motion to approve the remaining Offers in Compromise with the exception of hearing case #47, Wine Up, hearing case #91, Four Corners, hearing case #17, Lowes Foods 185, hearing case #33, Rushco Food Store 5, hearing case #18, Hankø Sports Room, which had already been ratified. Seconded by Commissioner Lyon. So Ordered.

## **II. FIRST OFFENSES - 38**

The following is a list of first offense violation cases in which Final Agency Decisions were signed by the Chairman on September 11, 2007, pursuant to the Commissionø authorizing resolution dated November 8, 2002:

1. Handy Dandy Foods ó 2624 Sam Wilson Road, Charlotte, NC 28214
2. El Charro Grill ó 2749 South Main Street, High Point, NC 27260
3. Don Lees Gas and Grocery ó 13718 NC 50 North, Willow Springs, NC 27592
4. Jolly Rogers ó 405 East 14<sup>th</sup> Street, Greenville, NC 27858
5. Gold Palacios ó 6736 North Tryon Street, Charlotte, NC 28213
6. Wilco 375 ó 9810 University City Boulevard, Charlotte, NC 28262
7. King Bee V ó 1030 North Main Street, Roxboro, NC 27573
8. Chilis Hamburger Grill and Bar ó 4600 Chapel Hill Boulevard, Durham, NC 27707
9. Sams Mini Mart ó 2207 West Green Drive, High Point, NC 27260
10. Lowes Foods 177 ó 267 New Market Shopping Center, Boone, NC 28607
11. Mi Pueblito Mexican Restaurant 4 ó 220 Oak Street, Forest City, NC 28043
12. Marcos Pizzeria Restaurant ó 946 Merrimon Avenue, Asheville, NC 28804
13. Quality Mart 35 ó 4501 Regency Drive, High Point, NC 27265
14. P C Mart 1014 ó 100 East Woodlawn Road, Charlotte, NC 28217
15. Ocean Hwy Country Store ó 717 Ocean Road, Holly Ridge, NC 28445
16. Pizza Hut ó 2107 Hwy 54 and 55, Durham, NC 27709
17. Players ó 159 ½ East Frank Street 2<sup>nd</sup> Floor, Chapel Hill, NC 27514
18. Traphill BP and Grocery ó 8725 Traphill Road, Traphill, NC 28685
19. Lava Java Coffee House and Bistro ó 5724 East W T Harris Boulevard Units D-G, Charlotte, NC 28215
20. Cattlemans Steakhouse ó 320 Hillsborough Road, Durham, NC 27705
21. Chili Peppers ó 3001 North Croatan Hwy, Kill Devil Hills, NC 27948
22. Cheros Market Café and Catering Company ó 112 West Water Street, Edenton, NC 27932
23. By Lo Citgo 3 ó 4000 Country Club Road ó Winston Salem, NC 27104
24. Fresh Market ó 7625 Pineville Matthews Road, Charlotte, NC 28226
25. El Cubilete Mexican Restaurant ó 3605 Groometown Road ó Suite 109, Greensboro, NC 27407
26. E Z Mart 1 ó 1920 Old Mountain Road, Statesville, NC 28677
27. Dragon Fly ó 3150 Evans Street ó Suite N, Greenville, NC 27834
28. Lotus Buffet ó 9605 North Tryon Street ó Suite H, Charlotte, NC 28262
29. Jons Main Street Bar and Grill ó 406 Main Street, Creedmoor, NC 27522
30. Mulberry Express ó 3215 South I-85 Service Road, Charlotte, NC 28208
31. Revival Grill ó 604 Milner Drive, Greensboro, NC 27410
32. Pizza Palace of Durham ó 3218 Guess Road, Durham, NC 27705
33. Peking Restaurant ó 5000 South Croatan Hwy Unit N-2, Nags Head, NC 27959
34. Wal Mart Supercenter 3371 ó 3240 Wilkinson Drive, Charlotte, NC 28208
35. Tandoor India ó 4612 West Market Street Space A & B, Greensboro, NC 27407
36. Save Mart ó 107 South Wooten Street, LaGrange, NC 28551
37. Harris Teeter 88 ó 13000 York Road, Charlotte, NC 28278
38. Island Pizza and Steam Bar ó 26006 Hwy 12 Unit 10, Waves, NC 27982

Chairman Fox made a motion to approve the Offers in Compromise for the First Offense cases with the exception of First Offense case #4, Jolly Rogers, First Offense case #36, Save Mart, First Offense case #10, Lowes Foods 177, which had been ratified earlier. Seconded by Commissioner Joyner. So Ordered.

### **III. ABC STORE LOCATION – HAVELOCK (CRAVEN COUNTY)**

Administrator Michael Herring addressed the Commission concerning the proposed location of an ABC Store in Craven County. On July 31, 2007, the Commission received a letter from Ray Hemphill, General Manager of the Craven County ABC Board, requesting approval for a temporary location that may become permanent. On August 7, 2007, ALE Agent Russell King began an investigation and found that the proposed temporary site is located in the Westbrooke Shopping Center on the west side of Havelock, North Carolina. The Craven County ABC Board currently has an ABC Store on the east side of Havelock but it is being temporarily being remodeled and rebuilt. They want this location as a temporary location, however, it is three miles from the present location and if it does well, the board might keep both stores. The Westbrooke Shopping Center houses a variety of small businesses. The proposed ABC Store location is at 482-484 US Highway 70 West, Havelock, North Carolina.

The location is zoned highway commercial with an accommodating ABC Store.

The property is currently owned by the estate of Gene A. Jackson. The estate is managed by Gene Jackson's sons, Jerry and John Jackson who are currently part of Jerry A. Jackson Real Estate Services. The proposal is for the Craven County ABC Board to lease this property for one year for \$20,000.00.

The Craven County ABC Board has no financial conflict of interest with the property owner.

The ABC Store will be approximately 1,025 feet.

The nearest church is the Lighthouse Assembly of God and is .4 of a mile from the proposed location.

The nearest school is Arthur W. Edwards Elementary School and is .7 of a mile from the proposed location.

The nearest ABC Store is the current Havelock store which is to be rebuilt.

Pursuant to ABC Commission Rules, Notice of Intent was posted on July 31, 2007, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this proposed location.

Mr. Herring introduced Mr. Ray Hemphill, General Manager of the Craven County Board and Mr. John Brazelton, Vice Chairman of the Craven County ABC Board, to address any questions by the Commission members.

Mr. Herring recommended the ABC Commission approve this request for a new ABC Store.

Chairman Fox made a motion to approve the new ABC Store location. Seconded by Commissioner Lyon. So Ordered.

### **IV. ABC STORE LOCATION – JAMES CITY (CRAVEN COUNTY)**

Administrator Michael Herring addressed the Commission concerning the proposed relocation of an ABC Store in Craven County. On August 7, 2007, ALE Agent Chris Carawan began an investigation and found the proposed location is currently being constructed and is owned by Trent Development Group. The Craven County ABC Board wants to expand Store #6 which is also located in this shopping center at 939 Highway 70 East, James City, North Carolina. They plan to move from their present location. The new building being constructed has four units and the Craven County ABC will occupy two of the units.

The lease agreement is between Trent Development Group and the Craven County ABC Board. The lease agreement for the board is \$2,350.00 a month.

The Craven County ABC Board expects that this new location will increase their current business by about 20% and a sales volume at this new store about \$1,200,000.

The nearest church is Pilgrim Chapel Missionary Baptist Church and is approximately .5 mile from the proposed location.

The nearest school is Brinson Memorial Elementary School and is approximately 1.7 miles east of the proposed location.

Pursuant to ABC Commission Rules, Notice of Intent was posted on July 2, 2007, in compliance with the ABC Commission's 30-day requirement. The ABC Commission has received no objections to this site.

Mr. Herring stated this is a relocation to a larger space in the same shopping center. Mr. Herring recommended the ABC Commission approve the relocation of the ABC Store.

Chairman Fox made a motion to approve the relocation of an ABC Store. Seconded by Commissioner Lyon. So Ordered.

## **V. OTHER BUSINESS –**

A public hearing was held concerning making a temporary rule permanent concerning Keg Registration. Chief Counsel Fred A. Gregory asked if anyone wanted to be heard. Mr. Gregory stated at a previous public hearing a large number of people were present. Mr. Gregory stated one notice had been received from the North Carolina Retail Merchants Association.

Mr. Gregory stated that after considering all comments he would request that the Commission adopt the rules written before them.

Chairman Fox made a motion to adopt Keg Registration as it appeared and may the Retail Merchants letter become a part of the record. Seconded by Commissioner Lyon. So Ordered. (Adoption was made effective as of September 19, 2007, subject to confirmation of the Commission's approval on that date.)

Chairman Fox approved a new future Commission meeting date of December 6, 2007.

With no further business, the meeting adjourned.

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Douglas A. Fox, Chairman  
N.C. Alcoholic Beverage Control Commission

Respectfully submitted by

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Dottie L. Taylor, Legal Division